

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1799 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SAILESH HARGOVINDBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1799 of 2004
MS KRISHNA U MISHRA for Petitioner No. 1
MR AMRISH K PANDYA for Petitioner No. 1
RULE SERVED for Respondent No. 1-2
MR AY KOGJE, AGP for Respondent No. 3
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/06/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 19-12-2003, by which the petitioner is detained under P.A.S.A. Along with the said order, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about six criminal cases pending against the petitioner. All these cases are in connection with theft of vehicles. It seems that the petitioner is in the habit of committing theft of vehicles. Therefore, after subjectively satisfying itself about the activities of the petitioner, the detaining authority has passed the detention order.

2) The learned advocate for the petitioner has submitted that all these cases are individual cases of theft, and therefore, at the most, these cases can be said to be cases of breach of law and order, and not cases of breach of public order. To substantiate his say, the learned advocate for the petitioner has relied upon the decision of Division Bench of this Court rendered in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Ors., reported in 2000 (1) G.L.H. 393, wherein it is held in para 22 as under :

"22. So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs."

3) Learned advocate for the petitioner further submitted that even otherwise, at the relevant time, the petitioner was in police custody in connection with one

criminal case and the detaining authority has stated in the grounds of detention that the petitioner will move a bail application and will be released on bail. The detaining authority has further stated that, on his being released on bail, the petitioner will again continue with this activity. Learned advocate for the petitioner submitted that the detaining authority has not recorded its subjective satisfaction as to on what basis it has come to the conclusion that the petitioner is likely to be released on bail.

4) To substantiate his say, the learned advocate for the petitioner has relied upon an unreported judgement of this Court delivered in Special Civil Application No.8881/2001 dated 17-01-2001, wherein this Court has observed in para 5 as under :

"There is no dispute about the factual aspects.

In two offences registered against the petitioner-detenu, he was bailed out by a Court of competent jurisdiction. So far as the third offence is concerned, the grounds of detention itself indicate that the detenu was not arrested in connection with that offence, but anticipating an application for bail and grant of bail, and on being released on bail, he may continue his anti-social activities, the detaining authority deemed it necessary to detain the petition. In this regard, decision of the Apex Court in the case of Amritlal v. Union Government, AIR 2000 SC 3674 may be profitably referred to. It was observed that the satisfaction of the authority based on likelihood of detenu moving an application for bail is not sufficient. That likelihood of detenu moving an application for bail is different from likelihood to be released on bail and, therefore, the order of detention was quashed. This judgement would be squarely applicable to the facts of the present case. In the instant case, there is no material to show that the subjective satisfaction recorded by the detaining authority that, on his arrest and on his producing before the Magistrate, he may be taken in judicial custody and he may apply for bail and that he may obtain bail and, thereafter, may continue his activities. Therefore, the subjective satisfaction recorded by the detaining authority for immediate need for detaining the detenu is without any basis. Hence, this petition deserves to be allowed."

5) Mr.Kogje, learned AGP has submitted that so far

as the judgement of the Division Bench is concerned, in that case, cases registered against the detenu were under Sections 420 and 406, while in the instant case, cases registered against the petitioner are under Section 379 of the Bombay Prohibition Act, as these are the cases of theft of vehicles.

6) Learned advocate for the petitioner submitted that looking to the tendency of the petitioner of repeating the same offence, normally, in subsequent cases learned Magistrate may not release the petitioner on bail in a routine manner. However, it is clarified that if the petitioner is not released on bail in connection with last offence, it is for the Public Prosecutor to point out that the petitioner is in the habit of repeating offence, and, if the petitioner is released on bail, the State can file appropriate application for cancelling the bail, if the State is of the opinion that the petitioner has misused his liberty. Ultimately, all these points are required to be decided by the appropriate Court, before whom such application is filed.

7) Considering the submissions of both the sides and considering the judgement relied on by the learned advocate for the petitioner, this petition is required to be allowed on the ground that the detaining authority has not recorded its subjective satisfaction as to on what basis it has come to the conclusion that the petitioner is likely to be released on bail by the criminal court.

8) Accordingly, this petition is allowed. The order of detention dated 19-12-2003 is quashed and set aside. The detenu, Sailesh Hargovindbhai Patel is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)

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